

SB 268 Referendum to require election of Supreme Court justices from 7 districts across Montana

(Senator Joe Balyeat R-Belgrade)

I've been working on this concept for at least six years. Think I've finally got it right.
First – What the bill does. Second – Why we should do this... send it to the people to vote.

Here's what it does. The bill divides the state into seven districts of approximately equal population. (See map and population chart). Each district is matched to a Supreme Court seat, seats 1 thru 6, with the Chief Justice assigned to district 7. Each subsequent SC judge would be from one of those seven districts, and be elected from one of those seven districts.

The proposed act would be submitted to the voters of Montana along with the 2012 primary election and, if approved by the voters, it will apply to the 2012 general election in November. 2012 is a presidential election year, there should be high voter interest and high turnout, so I wanted the voters to get a crack at this and have it first applied as soon as possible.... Rather than wait till an off-year election like 2014, which is three years down the road.

To make the transition to local district elections as easy as possible for the current sitting justices, the bill provides 4 different escape hatches:

- 1) The district residency requirement will be waived for all sitting Justices. Justices must reside in the district they are running for in the initial election only, not when they run for re-election. So after they're first elected to the court, it's obvious that the justices are then free to move their residency to Helena.
- 2) To the greatest extent possible the current Court justices have been matched to districts based on prior residency.
- 3) If more than one justice is from the same district, I usually gave preference to the one with seniority, but assigned the more junior judge's seat to the district which bordered their current or prior residency.
- 4) As a fail-safe, current Justices may run in any district; not just their assigned district. However, they must resign their assigned seat at the time they file in another district, to prevent any of them from trying to get 2, or 7, bites of the apple.

Now, Why should we do this?

You can see that with these four provisions, that Senate Bill 268 isn't seeking to replace or remove current justices, but rather bring justices closer to their MT constituents, and vice versa. It should permit more quality candidates to run for the court, in local races where their reputations will impact their elections, rather than allowing big money to dictate statewide elections where most voters know little about the two candidates running and their vote is often an uneducated guess based mostly on slick ad campaigns, with not much real knowledge of either candidate's track record. With more local candidates involved in localized races, there will be more transparency in the election process, and voters will have a greater understanding of the candidates' backgrounds and credentials.

Moreover, if diversity is good for the legislative process, I'd submit it's also good for the courts. Having a broad cross-section of Montanans serving in the legislature brings multiple perspectives -- resulting in balanced legislation. Likewise, a Supreme Court similarly spread across Montana would reap the same benefits, and reflect the diverse perspectives favored by each local district. It's not a good idea to have a Court comprised mostly of folks with an "inside the beltway" Helena mindset. Nor does it reflect the broad diversity of Montana's small towns and agrarian lifestyle when all 7 judges come from 3 or 4 big cities, reflecting a 'big city' mentality in their decision-making process. And it isn't just the rural/urban divide that needs balanced representation, there's merit in geographic diversity as well. Eastern Montana needs to be heard in Court discussions every bit as much Western Montana. The perspectives of Yellowstone County need to be brought out and contrasted with the Missoula County perspective. The flat-landers and the mountainside guys like me who've grown one leg shorter than the other all want our voices at least heard in the discussion, even if some other opinion eventually prevails.

So Senate Bill 268 seeks balanced and fair representation, and minimizes the influence of money in Supreme Court races to permit more candidates to seek seats. This proposal brings needed geographic balance to the court, and voters will finally have a chance to know who they're voting for in our supreme court elections. In the current system,

voters have no clue about any of the candidates and it comes down to a coin flip. Unfortunately, usually one of the candidates has more coins than the other guy, because special interest groups funnel the money to the candidate they think will most side with their issues on the court.

Eight other states elect Supreme Court Justices by district. Kentucky, Louisiana, Mississippi, and Oklahoma all do straight judicial elections (either partisan or non) by district. Illinois, Nebraska, South Dakota, and New York all use variations of geographic districts for their supreme court seats.

The question may have crossed your mind... What does the Montana Constitution and the Con-Con say about the issue. The constitution, Article VII, section 8, subsection (1) provides that supreme court justices shall be "elected by the qualified electors as provided by law."

Our legal services director has pointed out the following from the ConCon transcripts. It is a motion that failed that would have provided for election by the electors of the state at large. In particular, there was a substitute motion made during the ConCon, as follows:

CHAIRMAN GRAYBILL: We'll have a roll call vote. The motion is that "the justices of the Supreme Court *shall be elected by the electors of the state at large*.... " Transcript p. 1097 (emphasis added)"

And again, that motion failed, which clearly indicates that the majority of MT's ConCon didn't want to constitutionally mandate statewide Supreme Court races, but instead let them be set up "as provided by law" ... meaning letting the legislature (and perhaps the people as well, if by referendum) decide whether to do it at large statewide or under some other system.

Mr. Chairman, members of the committee, I think I can flesh this out for you best by answering your specific questions about how it works, and why we need to do it. So I'll cut my introduction short and urge you to be thinking of some questions for me. I know Judiciary is extremely busy, so I deliberately didn't recruit any proponents (I may have recruited some opponents). But I do have emails from at least two different district judges indicating their support for this concept. One writes, "I strongly support... district election for Supreme Court justices. [It will] result in a more varied court and attract better candidates."

So, with that, I'll sit and listen to proponents, if any, then opponents. And afterwards, I'll tell you exactly why the opponents are all wrong. Thank you.